IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 458 OF 2004.

1. Shri Vitthal Nilu N. Gaonkar,
Kindlem, Canacona – Goa
(since deceased represented
by legal heirs):
(a) Laximi Vithal N. Gaonkar.
(b) Nilesh V.N. Gaonkar.
© Neha Nilesh N. Gaonkar.
(d) Meera Vithal No. Gaonkar,
all residing at Kindlem,
Canacona – Goa.

(e) Lina Lau Dharne.
(f) Lau Dharne,
both residents of Sangli Taluka,
Sindudurga, Sawantwadi, Maharashtra.

2. Balkrishna Shivram Naik Gaonkar,
Chaudi, Canacona, Goa.

3. Shivaji Balkrishna Naik Gaonkar,
H. No. 593, Kindlem,
Canacona, Goa. ..... Respondents.

Versus

1. Dattaram Deu Desai,
r/o Savorcotta, Cuncolim,
Salcete, Goa.
(since deceased represented
by legal heirs) :-
(a) Smt. Vandan Dattaram Dessai.
(b) Shri Prakash Parab.
© Shri Devendra Dattaram Dessai.
(d) Shri Nainesh Dattaram Dessai,
all residents of House No.175,
Savorcotto, Cuncolim, Salcete,
Goa.
2. Nirakar Devalaya,
Kindlem, Canacona, Goa.
3. Afonso Fernandes,

C/o Smt. Telma Fernandes,
r/o Milbanvado, Cuncolim,
Salcete, Goa.
(since deceased represented by
legal heirs) :
(a) Zulema Colaco Fernandes.
(b) Piedade Fernandes.
© Alba Fernandes.
(d) Angela Colaco Fernandes.
(e) Roy Colaco Fernandes.
(f) Jeanette Fernandes.
(g) Corinne Fernandes.
(h) Andrea Fernandes.
(i) Ashley Fernandes,
All residents of Milhanvaddo, Cuncolim,
Salcete, Goa.

4. Larina Noronha,
   r/o Murida, Cuncolim,
   Salcete – Goa.
5. Dr. Antonio Quirinho Gomes,
   Bebquegal, Curchorem,
   Savordem, Goa.
6. Mallikarjun Devasthan,
   Chaudi, Canacona, Goa.
7. S.V. Naik Gaonkar,
   Kindlem, Canacona, Goa.
8. Runalfo L. Coutinho,
   Milhanvado, Cuncolim,
   Salcete, Goa.
9. Santosh Kaglo Gaonkar,
   Kindrelm, canacona, Goa.
10. Pissolo Bhikar Naik Gaonkar,
    Kindlem,Canacona, Goa.
11. Satyawan V.N. Gaonkar,
    resident of Aguada Jail. .... Respondents.

Mr. Shivan Dessai, Advocate for the Petitioners.

Ms. Amira Razaq, Advocate under Legal Aid Scheme for Respondent No.11.

CORAM: V. C. DAGA, J.

DATE: 20-7-2006

J U D G M E N T:

Heard. Rule returnable forthwith. Ms. Razaq waives service on behalf of the Respondent No.11. Heard finally by consent of parties.

2. This petition is directed against the Order dated 23.08.04 passed below Exhibit 50 rejecting the application under Section 10 of the Code of Civil Procedure (C.P.C.) holding that the party No.8 is not a party to the Special Civil Suit No.10/91 pending with the Court of Civil Judge, Sr. Division, Margao.

The Facts:

The factual matrix reveals that the petitioners are owners in possession of the property known as " Gozone "; which is situated in the village of Kindlem-Nagarcem, Taluka Canacona, Goa, registered in the Matriz records of Taluka Revenue Office of Canacona under No. 840.

The said property is surveyed under Survey No. 12/1, 13/1, 14/1, 17/1, 17/2, 17/3, 17/4, 17/5, 2/7, 3/1 and 2/1 of village Nagarcem. Part of the property is acquired and the following references are made in respect of the same by the petitioners viz; (a) Land Acquisition Case No. 248/89; (b) Land Acquisition Case No. 208/89; © Land Acquisition Case No. 251/89; and (d) Land Acquisition Case No. 240/89 (suit property).

3. Respondent No.1 filed Special Civil Suit No.10/92 before IIIrd Additional Civil Judge, Senior Division, Margao, against the petitioners and respondents no.2 to 11 for declaration of ownership of 1/4th part of the property surveyed under numbers referred to hereinabove (the suit property) and claimed compensation in respect of the same properties which are subject matter of references made.

4. That one more reference in Land Acquisition Case No. 59/95 in respect of Survey Nos.17/5 (part, 17/3 (part), 14/1 (part), 13/1 (part), 12/1 (part) of the suit property came to be made to the Additional District Judge, South Goa, at Margao. The subject matter of this reference was also the property involved in the Special Civil Suit No. 10/92 referred to hereinabove.

5. The factual matrix further reveals that the four References in respect of other survey numbers bearing Land Acquisition Case No. 66/96, 387/95, 209/98 and 59/95 have been disposed of with consent of parties on the ground that the compensation as may be awarded would be subject to the rights of the parties as may be decided by the Civil Court in Civil Suit No. 10/92 and compensation shall be paid in terms of the settlement/compromise arrived at between the parties.

6. It appears that the petitioners preferred an application seeking stay of the aforesaid proceeding in Land Acquisition Case No.59/95 till the disposal of Special Civil Suit No. 10/92 on the ground that the other pending seven references mentioned above have already been stayed and disposed of in terms of their respective orders passed on settlement/compromised terms in view of pendency of Special Civil Suit No. 10/92. It was thus prayed that pending disposal of Special Civil Suit No.10/92, which is pending before the IIIrd Additional Civil Judge, Senior Division, Margao, the Land Acquisition Case No. 59/95 be stayed in exercise of powers under Section 10 of C.P.C. to avoid inconsistent findings and multiplicity of litigation.

Submissions:

7. The aforesaid submission made and the order below Exh.50 did not find favour with the trial Court, with the result application under Section 10 came to be rejected solely on the ground that party No.8 is not a party to the Special Civil Suit No. 10/92. This order is a subject matter of challenge in this petition filed under Article 227 of the Constitution of India.

8. Learned counsel appearing for the petitioners submits that the purpose of Section 10 is to avoid conflict of judicial decisions by

preventing Courts of concurrent jurisdiction from adjudicating upon two or more parallel suits in which the matter in issue is substantially the same. He further submits that the expression "same parties" in Section 10 contemplates some effective parties and the addition of some persons as nominal or proforma parties in the subsequent suit does not detract from the fact that parties are essentially the same in both the suits. He, thus, submits that the impugned order is erroneous and suffers from non-application of mind on the part of the Court below and is liable to be set aside and application under Section 10 C.P.C. is liable to be allowed.

9. Per contra, learned counsel appearing for the respondents tried to support the impugned order but found it difficult to support the same in view of the sketchy order which hardly makes any discussion on the ingredients of Section 10. He could not take his submissions to the logical end.

Consideration :

10. Having heard the rival parties, the submissions made by the learned counsel appearing for the petitioners deserve acceptance. Having surveyed the various cases cited by the parties at the Bar, it is clear that Section 10 does not contemplate identity of parties or complete identity of the subject matter. It is enough that there should be substantial

identity of parties in the two suits. The purpose of Section 10 is to avoid conflict of judicial decisions by preventing Courts of concurrent jurisdiction from adjudicating upon two or more parallel suits in which the matter in issue is substantially the same. In the instant case all the conditions of Section 10 C.P.C. have been fulfilled. As such the trial Court was not justified in refusing to grant the application or prayer made in Exh.50.

11. In the result for the aforesaid reasons the impugned order is set aside and the trial of Land Acquisition Case No. 59/95 is stayed till disposal of Special Civil Suit No. 10/92. The petition is allowed. Rule is made absolute in terms of this order with no order as to costs.

V. C. DAGA, J.

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